

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12-cv-383-RJC**

CHARLES WILLINGHAM,

Plaintiff,

vs.

**BUNCOMBE COUNTY CORRECTIONAL
CENTER,**

Defendant.

ORDER

This matter is before the Court on limited remand from the Fourth Circuit Court of Appeals to determine whether pro se Plaintiff has satisfied the requirements under FED. R. APP. P. 4(a)(6) to extend the time within which to file a notice of appeal from this Court's dismissal of Plaintiff's action with prejudice. This Court's Order of dismissal was entered on January 15, 2013. (Doc. No. 4). Plaintiff did not file his notice of appeal until March 28, 2013. (Doc. No. 11). In its order of limited remand, the Fourth Circuit notes that Plaintiff asserts in his notice of appeal that he did not receive this Court's order dismissing his case until March 24, 2013. See (Doc. No. 15). The Fourth Circuit has, therefore, remanded the action to this Court with instructions to consider the factors of FED. R. APP. P. 4(a)(6) in determining whether to reopen the time for Plaintiff to file a notice of appeal.

Federal Rule of Appellate Procedure 4 ("Rule 4") provides in relevant part that:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

FED. R. APP. P. 4(a)(6). For the purposes of this motion, the Court will accept Plaintiff's assertion that he did not receive notice of this Court's Order until March 24, 2013. Furthermore, Plaintiff's request to reopen the time to file a notice of appeal is timely. Plaintiff has, therefore, met the first two prongs of Rule 4(a)(6). With regard to the third prong, the Court is unaware of any factors that would suggest that Defendant would be prejudiced by reopening the period for Plaintiff to file an appeal. The Court will, thus, grant Plaintiff's motion to reopen the time to file an appeal.

IT IS THEREFORE ORDERED that Plaintiff's request, pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure, to reopen the time to file a notice of appeal from this Court's order dismissing his case is **GRANTED**; and

IT IS FURTHER ORDERED that if Plaintiff wishes to file a notice of appeal of the Court's Order, he shall do so within fourteen (14) days of service of this Order.

Signed: September 6, 2013

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

